IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9045 OF 1993

WITH

SPECIAL CIVIL APPLICATION NO. 6811 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYUBEN D SHELAT

Versus

MANDAVNI-NI-POLE SEVA SANGH

Appearance:

MR RV DESAI for Petitioner No. 1
MR TS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/03/2002

COMMON ORAL JUDGEMENT

1. Both these petitions arising out of the common question raised by the petitioner between the same parties, hence both these petitions are being disposed of by this common judgment.

2. Special Civil Application No. 9045/93 has been filed by the employee alleging herself to be an employee of the respondent - Mandavi-ni- Pole Seva Sangh on the assertion that she was working as Clerk-cum-Sales Girl from 16-2-1975 with the respondent - Sangh. The petitioner has left services of the respondent - Sangh after giving resignation on 31-5-1990 and her last wages drawn was Rs.620/- p.m. It is stated that the respondent Sangh is a big establishment and is running 13 institutions under the head of Mandvi-ni Pole Seva Sangh. The petitioner has worked mainly with Mahila Gruh Sadhan Stores. One Chandrakant B. Shah was the secretary of the respondent - Sangh.

3. The petitioner filed an application being Payment of Gratuity Application No. 183 of 1991 for recovery of Rs.8,572/- together with 10% p.a. interest before the Controlling Authority established under the provisions of the Payment of Gratuity Act, where it was argued on behalf of the respondent Sangh that the petitioner has worked with Mahila Gruh Sadhan Stores with which the respondent Sangh has no concern and the provisions of Payment of Gratuity Act are not attracted and there was no relationship of master and servant between the petitioner and the respondent Sangh. The Controlling Authority arrived at the conclusion that the provisions of the Payment of Gratuity Act are applicable and hence the petitioner is entitled to the amount of Rs.5,365/along with 10% p.a. interest to be paid to the petitioner towards outstanding gratuity dues vide order dated 21-4-1992.

4. The respondent Sangh filed Appeal No. 20/92 before the Appellate Authority against the order passed by the Controlling Authority alleging that the provisions of the Payment of Gratuity Act are not applicable in the case of the present petitioner. That appeal of the the respondent - Sangh was allowed by the Appellate Authority holding that the provisions of the Payment of Gratuity Act are not applicable to the respondent - Sangh. The petitioner also filed Appeal No. 19/92 before the Appellate Authority stating that the petitioner was

entitled more amount of gratuity than awarded by the Controlling Authority. That Appeal No. 19/92 filed by the petitioner was rejected by the Appellate Authority and hence the petitioner has challenged the order dated 13-7-1993 whereby the appeal of the respondent was allowed and the appeal of the petitioner was rejected.

5. In Special Civil Application No. 6811/94 the petitioner as sought for quashing and setting aside the order dated 5-4-1994 passed by the Labour Court, Ahmedabad, whereby it was held by the Labour Court that the provisions of the Payment of Wages Act are not applicable to the institution of the respondent - Sangh. Spl. C. A. No. 6811/94 has been filed on the assertions that the petitioner was working as Clerk-cum-Sales Girl from 10-2-1975 with the respondent establishment and she tendered her resignation on 31-5-1990. The respondent - Sangh is the principal establishment and is running 13 institutions. The respondent - Sangh used to entrust the work to the employees employed by the respondent - Sangh about the said institutions. One Chandrakant B. Darji was Secretary of the respondent - Sangh and he was looking after 13 institutions. Service conditions, nature of work etc. of the employees of the said 13 institutions are managed and controlled by the respondent Sangh. The respondent - Sangh was paying statutory wages to the petitioner. Therefore, the petitioner had filed Recovery Application before the Labour Court, Ahmedabad stating therein that the provisions of the Bombay Shops and Establishment Act, Minimum Wages Act, Industrial Disputes Act and Payment of Gratuity Act as well as other laws are applicable to the respondent - Sangh. The petitioner requested the Labour Court, Ahmedabad to compute and give the benefits in terms of money and pass the appropriate orders, with regard to; (a) Difference of wages for the period from February, 1975 to May, 1990, (b)Unpaid leave benefits for 16 years and (c) Unpaid amount of bonus for 16 years, total Rs.75,434-10 ps. That application has been rejected by the Labour Court on the ground that the respondent has agitated the existence of relationship of employer and workman in the written statement and the same pointed, therefore, is required to be decided by the appropriate Court u/s 10 (1) of the Industrial Disputes Act. Hence, this petition has been filed by the petitioner against the order passed by the Labour Court on the ground that the impugned order of the Labour Court is bad in law and perverse and the Labour Court has failed to consider and appreciate the oral and documentary evidence on record. The resignation of the petitioner was accepted by One Shri C.B. Vyas, the

Secretary of the respondent establishment and the said resignation was addressed to Mandavi-ni Pole and that resignation of the workman of the respondent establishment was accepted by the respondent Sangh. The Labour Court has without entering into details and material produced before it has rejected the application of the petitioner on the basis that the plea raised by the respondent in the written statement that there exists no relationship between the respondent and the petitioner as workman and the employer. The Labour Court can enter into and decide the question whether there was relationship between the employer and the employee before adjudication of facts in terms of money. The Labour Court has not considered the substantial question of law and has rejected the application of the petitioner only on the ground that the relationship of the employer and employee between the petitioner and respondent is disputed and hence it has no jurisdiction to decide the matter. The provisions of Section 33 (c) (2) of the of the Industrial Disputes Act provide for recovery of unapid amount and benefits which can be computed in terms of money. The Labour Court is empowered to decide the question with regard to relationship of master and servant between the petitioner and the respondent u/s 13 (c) (2) of the Industrial Disputes Act. The Labour Court without entering into the details as to relationship of master and servant between the petitioner and the respondent has refused to entertain the application as it is disputed question raised in the written statement filed by the employer respondent.

6. Heard the learned counsel for the parties and perused the material on record.

7. The main question in the present case is as to whether the provisions of Payment of Gratuity Act are applicable or not. The Appellate Authority came to the conclusion that the petitioner was the employee of Mahia Gruh Sadhan Stores which is a separate entity of trust. The respondent Sangh has been registered separately and independently and Mahila Gruh Sadhan Store has also been registered separately. After going through the material on record, the Appellate Authority came to the conclusion that both the trusts are separately registered and they are separate and different institutions and their entity is separate. Not only that, their existence is also separate and the petitioner was working in Mahila Gruh Sadhan Stores where there were only three employees. Where minimum 10 persons are working in the institution the provisions of the Payment of Gratuity Act can be applicable. As only three persons were working in Mahila

Gruh Sadhan Stores it has no connection with regard to applicability of the provisions of the Payment of Gratuity Act. As such, the provisions of the Payment of Gratuity Act are not applicable in the present case.

8. According to the learned counsel for the petitioner, resignation given by the petitioner to the Secretary of Mahila Gruh Sadhan Stores was accepted by him and some vouchers of Mandvi-ni Pole Seva Sangh were also found in the bunch of the vouchers of the respondent. Some invitation cards were also sent by the respondent Sangh to Mahila Gruh Sadhan Stores, Paldi. Some employees of the respondent Sangh took charge from the petitioner when the petitioner tendered her resignation and that resignation was accepted under the instructions of the Secretary of the respondent Sangh.

9. The contention of the learned counsel for the petitioner on the basis of the material on record is that the respondent is running 13 institutions and the respondent Sangh is the head institution of other institutions of the respondents including Mahila Gruh Sahdhan Stores, where the petitioner was working. Mahila Gruh Sadhan Store Trust was under the authority of the respondent Sangh. As such, the petitioner was the employee of the respondent Sangh. Hence, the petitioner is entitled to the gratuity as claimed by her. But that contention of the learned counsel for the petitioner is not entertainable in the eye of law in view of the fact that the Appellate Authority has recorded the finding that both the institutions are separate and they have no connection with each other and their registrations are different and entity is also separate. The petitioner was the employee of Mahila Gruh Sadhan Stores where only three persons were working and hence the provisions of the Payment of Gratuity are not applicable either to Mahila Gruh Sadhan Store or to the respondent Sangh. As it is disputed question of fact and as the same question has been adjudicated by the appellate authority, this Court cannot re-examine the material on record on the basis of the which the petitioner is claiming the gratuity amount from the respondent Sangh.

10. In the facts and circumstances of this case, I do not find any good reason to interfere with the findings recorded by the Appellate Authority rejecting the petitioner's application and allowing the appeal of the respondent. Accordingly, Spl. C.A. No. 9045 of 1993 fails and the same deserves to be dismissed.

11. So far as Spl. C. A. No. 6811 of 1994 is

concerned, the petitioner has filed an application before the Labour Court. But the Labour Court has recorded the finding that there was no relationship of master and servant between the petitioner and respondent. As such, the Labour Court has no jurisdiction to decide the matter. The petitioner has failed to establish relationship of master and servant between herself and the respondent before the Labour Court, this Court cannot again direct the Labour Court to consider and decide the same again. If the petitioner could not able to establish relationship of master and servant, this Court cannot record finding that the petitioner was workman of the respondent Sangh. As such, the petitioner has failed to establish her case before the Labour Court. Therefore, the Labour Court is fully justified in rejecting the application of the petitioner. Under these circumstances, this Spl. C.A. No. 6811 of 1994 deserves to be dismissed.

12. In view of the above discussion, both these petitions are dismissed. Rule is discharged with no order as to costs, in both the petitions.

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/JVSatwara/